



RICHMOND, HITCHCOCK,  
FISH & DOLLAR  
P.O. Box 2443  
Bartlesville OK 74005

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MAR 16 2004

In re Application of  
Edward L. Sughure et al.  
Application No. 10/607,043  
Filed: June 26, 2003  
Attorney Docket No. 34035US

OFFICE OF PETITIONS

:  
: DECISION REFUSING STATUS  
: UNDER 37 CFR 1.47(a)  
:

This is in response to the petition filed December 23, 2003 under 37 CFR 1.47(a), in response to the Notice to File Missing Parts "Notice" mailed September 15, 2003.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to respond, correcting the below-noted deficiencies. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on June 26, 2003, naming Edward L. Sughure, Bobby G. Cockrell, Glenn W. Dodwell and Brent J. Bertus without a signed declaration.

Accordingly, on September 15, 2003, a "Notice To File Missing Parts of Application" was mailed, requiring *inter alia* a properly executed oath or declaration.

In response, on December 23, 2003, the present petition was filed. Petitioners assert that the Assignment and Declaration, Power of Attorney and Petition documents were given to inventors Sughure, Cockrell and Dodwell each of whom has executed the declaration and the declaration was submitted along with this petition. Petitioners further assert that the Assignment and Declaration, Power of Attorney and Petition documents were personally given to inventor Bertus but that the signed documents have not been returned. Petitioners claim that Mr. Bertus specifically told inventor Sughure that he (inventor Bertus), "was no longer interested in participating in any patent matters on behalf of ConocoPhillips Company related to this invention".

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee; and
- (4) a statement of the last known address of the non-signing inventor.

The present petition lacks item (1).

In regards to item (1), petitioners have not provided sufficient proof that a complete copy of the application (specification, including claims, drawings, if any, and the declaration) was given to the non-signing inventor. The statement made by Ms. Lynda S. Jolly (attorney of record) is that the "Assignment and Declaration, Power of Attorney and Petition" was given to Mr. Bertus at lunch but no proof that the complete application was given to him has been provided. Thus, there is no evidence to show that inventor Bertus had the benefit of seeing the application.

Petitioners may show proof that a copy of the application was sent or given to the non-signing inventors for review by providing a copy of the cover letter transmitting the application papers to the non-signing inventors or details given in an affidavit or declaration of facts by a person having first hand knowledge of the details. Please be reminded that it is the complete application that is in issue.

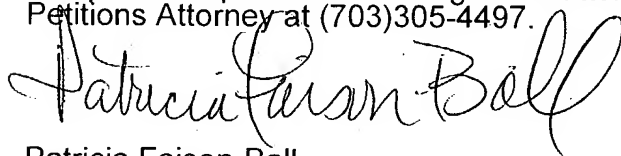
Likewise, before a *bona fide* refusal can be shown, the non-signing inventor must have been given an opportunity to review the application. Therefore, petitioners must show proof that the non-signing inventor refuses to sign the declaration after being sent or given a copy of the application papers. If there is a written refusal, petitioners should submit a copy of that refusal with any renewed petition. If the refusal was made verbally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts. The statement made in the petition is that the verbal refusal made by Mr. Bertus was made to inventor Sughure. In that case, an affidavit from Mr. Sughure would be required as he would be the person with first hand knowledge of the details concerning the refusal.

Further correspondence with respect to this matter should be addressed as follows:

By mail:        Mail Stop Petition  
                  Commissioner for Patents  
                  P.O. Box 1450  
                  Alexandria, VA 22313-1450

By FAX:        (703) 872-9306

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703)305-4497.



Patricia Faison-Ball  
Senior Petitions Attorney  
Office of Petitions